

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 09-60195

BIG BEAR CREEK ESTATES, LLC,

Chapter 11

Debtor.

Judge Thomas J. Tucker

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ORDER REQUIRING DEBTOR TO AMEND DISCLOSURE STATEMENT

On November 5, 2009, Debtor filed a plan and disclosure statement, in a document entitled “First Amended Combined Plan of Reorganization and Disclosure Statement of Big Bear Creek Estates, LLC” (Docket # 40). The Court cannot grant preliminary approval of the disclosure statement contained within this document (“Disclosure Statement”). The Court notes the following problems, which Debtor must correct.

First, Debtor must change the heading for Article II of the Plan on page 5 so that it reads “Treatment of Claims Not Subject to Classification and Not Entitled to Vote For or Against the Plan.”

Second, in Article II, Paragraph A of the Plan on page 5, Debtor must delete the following language: “These claims are not impaired and” so that the final sentence of this paragraph reads in its entirety: “Creditors holding such claims are not entitled to vote under the Plan.”¹

Third, Article II, Paragraph B.1 of the Plan on page 6, states: “These claims would not be impaired and are not entitled to vote under the Plan.” Debtor must rewrite this sentence so that it reads: “These claims are not entitled to vote under the Plan.”

¹ Impairment is a concept that applies only to claims that are subject to classification, such as the claims treated in Article III of the Plan. *See, e.g.*, 11 U.S.C. § 1124 (opening phrase).

Fourth, in Article III of the Plan on page 6, Debtor must delete the sentence which immediately precedes Paragraph A and reads: “This Class shall be impaired.”

Fifth, Article III, Paragraph B of the Plan on page 7, which discusses the “unperfected secured claim of DENNIS SILVI (“Silvi”),” contains several problems, which must be corrected:

- There is nothing in the Plan that discloses on what basis Debtor can seek to avoid Silvi’s lien based on 11 U.S.C. § 547. Unless Debtor explains why 11 U.S.C. § 547 could apply, Debtor must delete the reference to § 547.
- It appears that Debtor plans to file an adversary proceeding seeking a determination that Silvi’s secured claim is wholly unsecured under 11 U.S.C. § 506(a), because the estate’s interest in the property securing the lien is insufficient to fully secure Silvi’s claim. It also appears that, “in the alternative,” if the Debtor is not successful on the effort to strip the lien under § 506, Debtor will seek to avoid Silvi’s lien under § 544, based on the fact that Silvi did not perfect his lien prepetition. Debtor must clarify that Debtor will pursue this alternative theory of lien avoidance under § 544 in the contemplated adversary proceeding.² Debtor also must state how Debtor will treat Silvi’s claim, if Debtor ultimately is *unsuccessful* in avoiding Silvi’s lien.
- Debtor must delete “et seq.” from the fourth sentence of this paragraph.

Sixth, Debtor must delete the phrase “The claimants of” from the beginning of the first sentence of Article III, Paragraph C.1 on page 8, so that the sentence reads: Class III shall consist of the claims of the unsecured Creditors, if any, including those claims that arise from the rejection of executory contracts.”

² The Court assumes that this is what the Debtor intends here. If, instead, Debtor intends here to propose that confirmation of the plan alone will avoid Silvi’s lien under § 544, based on Silvi’s alleged failure to perfect the lien pre-petition, then there is no need for Debtor to file an adversary proceeding, after plan confirmation, to strip the lien under § 506.

Seventh, Debtor must amend Article III, Paragraph E of the Plan on page 9 as follows:

- Article III, Paragraph E must state: “Class IV. The claims of Class IV shall consist of the claims of the following insiders of Debtor for unpaid prepetition loans to Debtor: (1) Jason Fitch, Managing Member and 50% equity holder, in the amount of \$13,635.00; (2) Karen Wood, Member and 50% equity holder, in the amount of \$12,648.00; and (3) KJAK, Inc., a closely held Michigan Corporation whose shareholders consist of Jason Fitch, Karen Wood, Annette Chantaca (Spouse of Jason Fitch) and Kenneth Wood (Spouse of Karen Wood). The claims in this class are impaired and shall receive nothing.

Eighth, Debtor must amend the Plan so that it includes a separate class of, and the treatment of, the equity interests of Debtor, namely, Class V, consisting of the equity interests of Jason Fitch, Managing Member and 50% equity holder, and Karen Wood, Member and 50% equity holder. Debtor must state:

Confirmation of this Plan shall terminate the rights and interests of the aforementioned Equity holders: Jason Fitch and Karen Wood, *see* 11 U.S.C. § 1141(d)(1)(B). The reorganized entity shall have four (4) equal equity interests (members/owners) consisting of:

1. Jason Fitch, Managing Member and 25% owner;
2. Karen Wood, Member and 25% owner;
3. Annette Chantaca, Member and 25% owner; and
4. Kenneth Wood, Member and 25% owner,

who shall each contribute an equal amount of capital commencing on the effective date of the Plan as more fully detailed in Exhibit C, *infra*.

Ninth, Debtor must delete all language in the Disclosure Statement following Paragraph VI.E.2(A)2 on page 32. In other words, Debtor must delete Paragraphs VI.E.2(B) and (C) in their entirety and the sentence on page 32 following these paragraphs.

Accordingly,

IT IS ORDERED that Debtor must file, no later than **November 12, 2009**, an amended combined plan and disclosure statement which corrects the above stated problems.

IT IS FURTHER ORDERED that Debtor also must provide to Judge's chambers, no later than **November 12, 2009**, a redlined version of the amended combined plan and disclosure statement, showing the changes Debtor has made to the "First Amended Combined Plan of Reorganization and Disclosure Statement of Big Bear Creek Estates, LLC" (Docket # 40), filed November 5, 2009. Debtor must submit this redlined document to chambers electronically, through the Court's order submission program.

Signed on November 6, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge